

**Before the**  
**FEDERAL COMMUNICATIONS COMMISSION**  
**Washington, DC. 20554**

**In the Matter of**

**Cross-Ownership of Broadcast  
Stations and Newspapers**

**MM Docket No. 01-235**

**Newspaper/Radio Cross-  
Ownership Waiver Policy**

**MM Docket No. 96-197**

**To: The Commission**

**COMMENTS of Nickolaus E. Leggett and Donald J. Schellhardt**

The following are comments from Nickolaus E. Leggett and Donald J. Schellhardt.

**Nickolaus E. Leggett** is an amateur extra class radio operator (call sign N3NL), inventor, and a certified electronics technician. He is writing from his perspective as a political scientist (The Johns Hopkins University, Master of Arts in Political Science – 1970).

**Donald J. Schellhardt** is an attorney, licensed to practice law in both Virginia and Connecticut. At present, he is a solo practitioner of regulatory, legislative and family law. In the past, however, he has held a number of responsible public policy positions inside and outside of government, including Legislative Counsel to U.S. Representative Matthew J. Rinaldo (R-NJ, retired), who served on both the House Energy & Commerce Committee and its Communications Subcommittee ... GS-15 Policy Advisor on global warming at the U.S. Environmental Protection Agency ... and Director of Legislative & Regulatory Affairs with the American [Natural] Gas Association.

We are writing as citizens concerned by the possible elimination of the newspaper-broadcast cross-ownership rule and the likely further consolidation of the broadcast industry.

Elimination of this rule will likely have a very negative impact on the American political and social system. These comments address these impacts and possible strategies for avoiding them.

### **Context of this Discussion**

This Notice of Proposed Rulemaking (NPRM) is being considered in an environment of increasing consolidation of ownership of broadcast radio and TV stations. The impacts of changing the cross-ownership rule will be combined with the impacts of the ongoing trend of broadcasting consolidation.

### **Impacts of Removing the Cross-Ownership Rule**

If the existing cross-ownership rule is removed or substantially watered down, it is likely that the current strong trend of consolidation in the media industry will increase. This consequence will result in one corporation or only a few corporations owning all the major radio, television, and printed media in many locations. Furthermore, these very large media corporations will own most of the media throughout the United States of America.

A key consequence of this extreme concentration will be that certain “mainstream” political and social views will become dominant in the concentrated media and many other views will be increasingly ignored. This trend is the result of a natural tendency of the media management to focus on modes of thought and belief that are comfortable to them. In the past, this tendency was controlled by a fairly diverse ownership of the media (broadcast and print) that encouraged numerous views to be presented and considered within the Nation in a

marketplace of ideas. With just a few giant corporations owning the Nation's media, the diversity of content will decline and disappear.

The numerous viewpoints that are excluded from the media by concentrated ownership will not go away. Indeed, as they are excluded over time they will grow stronger in intensity and resentful of the social structure that excludes them. We have seen this phenomenon in the past with the exclusion of African-Americans and other minorities from many American activities. This caused an increasing intensity that led to violent and riot levels at times. Eventually, the American political system was able to constructively respond to this situation and deflect from a further trend to hostility and violence.

This was not a unique situation. If people are excluded from a set of activities, they will merely move on to another set of activities while at the same time developing a hostility to the party or parties that excluded them in the first place. Human energy does not go away. It merely mutates into new and sometimes more vigorous and vicious forms.

This is a dangerous situation because the issues and opinions that are excluded from the broadcast and print media are important to numerous specific neighborhoods, communities, and groups within the nation. Excluding them will structure a situation of us (the excluded people) versus them (the media elite). If the exclusion persists, the excluded people will eventually view the media as an enemy that must be overcome by various means. Simply put, the concentrated media will be viewed as an enemy of democracy. This is an undesirable deviation from the traditional American image of a tolerant and pluralistic society where numerous media ranging in size from tiny to gigantic and expressing different outlooks coexist in a free environment of ideas. This situation is intensified because

economic opportunities of participation in the media are being denied in addition to political and social opportunities to engage in discussion of community issues.

Over time the excluded people will grow in numbers and they will view the corporate media structure and the government that supports it as illegitimate. This is an important step towards very major social and political changes because legitimacy is the main life blood of a political and social system. When a political system is healthy, the people in that system view it as legitimate: fair, right, just, and basically reasonable. In America, legitimacy is linked to access to the political and social system. When a political system turns unhealthy the citizens tend to view the system as an illegitimate imposition from the outside which serves the interest of special privileged groups at the expense of the interests of the citizens.

### **Possible Responses to Illegitimate Power**

The people who are excluded from the media have resources of their own to push back at the political system. Some of the excluded citizens are organized in medium sized or small organizations that are blocked from participation in the broadcasting world. These organizations have budgets and can bring the issue of exclusion to the courts. Despite the fact that civil law is quite expensive, these organizations will be able to bring such issues as the constitutionality of radio license auctions to court. These auctions will diminish in legitimacy as the only winners are seen as gigantic corporations with no common interest with the American citizens.

Others who do not have such deep pockets will gravitate towards political groups that question the basic legitimacy of the American federal government and the current organization of the private sector economy. Some of this trend can already be seen in the protests of multinational corporations and globalization.

Still others will choose direct civil disobedience such as pirate radio. There have been numerous cases of pirate radio operation by individuals and groups that view the present corporate-dominated media as illegitimate. Pirate radio is assisted by the fact that it is easy to build and operate a pirate radio station using conventional technology. Even migrating to digital broadcasting will not shut off pirate radio because there are many people who can create a digital system. Software defined radios (SDRs) will make digital piracy especially convenient. Technical innovations such as pirate repeaters in unmanned balloons and multiple transmissions could further increase its impact.

More intense groups could sabotage broadcasting facilities in various ways ranging from simple jamming, to cutting feed lines, to nastier options.

Obviously, if these situations were allowed to fester for a long period of time, even more intense events could occur. Entire nations or empires can be restructured, dismantled, or overthrown over time. A recent example of this was the Soviet Union which peacefully collapsed due to its dwindling legitimacy.

The Federal Communications Commission must constantly strive to avoid these negative situations and declines in the legitimacy of telecommunications regulation.

### **The Role of the Internet**

Some commentators in other FCC proceedings have stated that we do not need to be concerned with media concentration because there is the wide open Internet that presents ample opportunity for locally-oriented media. This is not correct as is shown by the following factors:

- Half of U.S. homes do not have Internet-capable computers. This results in the less affluent half of the U.S. population being largely excluded from the benefits

of Internet broadcasting and web sites. The basic problem is that computers are still fairly expensive with a cheap one priced at about \$500. Compare this to 25 cents for a copy of the Washington Post, \$20 for a portable FM radio, and \$100 for a basic TV set. In addition, the computer owner has to pay at least \$10 per month for basic Internet access. Clearly the Internet is not a favorable medium for low income citizens and their communities.

- Locating web sites and web broadcasters on the Internet is an awkward and uncertain process. Even if you use an excellent search engine such as [www.google.com](http://www.google.com), you must wade through a huge amount of extraneous material to locate the web sites of interest. To most users, the Internet appears to be a gigantic “magazine” with a very poor table of contents. Most of the hits that you get while searching are links to web sites that are trying to sell you something in a fairly sleazy marketplace. If you do not enjoy the process of searching, you will give up on the Internet. Contrast this situation to the ease of accessing the conventional broadcast and print media.
- The Internet has turned out to be more suitable for special interest web sites such as model yacht sailing than it is for geographically-oriented media serving a specific town or neighborhood.
- Internet broadcasting using streaming audio, or especially video, is not an inexpensive proposition at all. This contrasts to the small conventional text and graphics web sites which are inexpensive.
- At least so far, the Internet is not portable. Most people listen to the radio while they are on the move in their cars or walking. This access is not available to

Internet broadcasters. In poor communities the portable radio or the boom box is an important mode of accessing the media. So local or neighborhood Internet broadcasters cannot reach them.

- Large corporate players may come to dominate the Internet the way they have already dominated radio and television broadcasting.

We must look beyond the Internet to find solutions for protecting media diversity.

While the Internet can help despite these limitations, it is not a sufficient answer to the growing problem of concentration.

### **Recommended FCC Actions to Counter the Concentration of Broadcasting**

All of the negative impacts of encouraging further concentration of the media can be limited by constructive actions of the FCC. Desirable actions include the following:

- The cross-ownership rule should be retained as it is, because U.S. media are already too concentrated. Further concentration is highly undesirable.
- The Commission can propose the allocation of new spectrum and rules for urban neighborhood and community broadcasting. The new Low Power FM (LPFM) service was excluded from urban and suburban areas by an unwise vote of the U.S. Congress.
- The Commission should conduct a Notice of Inquiry (NOI) about the constitutionality of license auctions. The role of these auctions in relation to the 14<sup>th</sup> Amendment equal protection of the law should be considered. If the bias of auctions towards the very rich organizations is too strong, the Commission can propose that auctions be modified or replaced by an alternative allocation mechanism such as licensing lotteries.

- The Commission can require broadcasters to provide subcarrier channels or air time to community groups for local coverage and programs.
- The Commission should defend media ownership caps in general as being essential for the long-term health of American democracy. This vital aspect has not been adequately considered in the courts or in Congress. Instead, the courts have been hearing only about the large corporations' rights of free speech. What about everyone else's access to the podium?

The FCC should continue the cross-ownership rule to keep some diverse media voices present in each community.

Respectfully submitted,

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October 3, 2001